Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Ghose.

LALIT MOHUN SHAHA (PLAINTIFF) *v.* SRINIBAS SEN (DEFENDANT.)* 1886 *July* 29.

Arrears of rent, Suit for—Payment by Durputnidar to stay sale—Regulation VIII of 1819*—Bengal Act VIII of* 1869, *s.* 62.

The zemindar of an estate, in which the plaintiff and defendant respectively had purchased putni and durputni tenures, obtained decrees for arrears of rent accruing before their purchases, though one of the decrees was obtained subsequently to defendant's purchase, and in execution of these decrees he advertized the putni for sale, and the amounts due were paid into Court by the defendant to protect the tenure from sale. In a suit by the putnidar against the durputnidar for arrears of rent accruing due subsequently to the defendant's purchase: *Held* that the defendant was on the construction of s. 13 of Regulation VIII of 1819, and s. 62, Bengal Act VIII of 1869, entitled to set off such payments against the plaintiff's claim. *Nobogopal Sircar* v. *Sreenath Bandopadhya* (1), followed.

THIS was a suit for arrears of rent in which the defendant claimed to set off against the plaintiff's demand sums paid by him, as he alleged, on behalf of or for the benefit of the plaintiff, to save the estate from sale. The plaintiff and defendant had become by purchase respectively putnidar and durputnidar under the same zemindar. The amounts the defendant claimed to set off were payments into Court made by him in satisfaction of decrees obtained by the zemindar against the putnidar, under whom the defendant's durputni was held, one of these decrees being previous, and the other subsequent, to the date of the defendant's purchase, which was admittedly made at an auction sale of the tenure for its own arrears.

The Munsiff found that the defendant was not entitled to set off the amount paid in respect of the decree obtained before the defendant's purchase, but he allowed the set off in respect of the other decree. He therefore decreed the plaintiff's claim in part only.

On appeal, however, the Judge allowed the whole set-off claimed by the defendant.

From this decision the plaintiff appealed to the High Court.

* Appeal from Appellate Decree No. 898 of 1886, against the decree of H. F. Matthews, Esq., Judge of Nuddea, dated the 2nd of February 1886, modifying the decree of Baboo Girindra Mohun Chuckerbutti, Munsiff of Kooshtea, dated the 12th of September 1885.

(1) I. L. R., 8 Calc., 877.

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LALIT MOHUN SHAHA v. SRINIBAS SEN.

Baboo *Nil Madhab Bose* and Dr. *Gurudas Banerjee* for the appellant.

Baboo *Durga Dass Dutt* for the respondent.

The judgment of the Court (PETHERAM, C.J., and GHOSE, J.) was as follows :—

PETHERAM, C.J.—The plaintiff in this suit is a person who, in the month of Srabun 1289 (July 1882), purchased a putni by private sale. At the time of his purchase, the land, which was the subject of the putni, was in the possession of the defendant as durputnidar, he having bought it at an auction sale for arrears of rent due upon the tenure, some six months previously, and at the time of these purchases there was due to the zemindar, or the superior landlord of the whole, three years' rent at the rate of Rs. 43 a year, that rent having become due before either the plaintiff or the defendant had got on to the land.

By the terms of the durputni under which the former durputnidar, whose tenure has now passed to the defendant, held the property, he was to pay to the putnidar, who, since the purchase, is represented by the plaintiff, the sum of Rs. 73 annually; Rs. 43 was to be paid to the zemindar in discharge of the putni rent; and the remaining Rs. 30 to his (the defendant's) immediate landlord, the putnidar, now represented by the plaintiff.

That being the state of things, the zemindar obtained a decree against the plaintiff's predecessor in title, or at all events, in the name of the plaintiff's predecessor in title (he being the person whose name appeared in his sherista), for the three years' arrears which were due from the putnidar to him, and in satisfaction of that decree he advertized the putni for sale. The plaintiff, the then putnidar, did not pay the money covered by the decree, but it was the defendant who did so, and thus saved the putni from being sold.

It must be borne in mind that the decree was for a sum of money for which the putni was liable to be sold in whosesoever hands it might be found, and upon the sale of the putni, all the subordinate interests, including that which had come into the hands of the defendant, would have fallen in, and the zemindar would have been in a position to turn out all under-tenants and take the land into his own hands.

It must also be borne in mind that the person who was *personally* liable to the zemindar for the rent, at the time when it became due, was the former putnidar. Under these circumstances, it is clear that the present plaintiff could not be personally liable for the rent, because he made no contract with the zemindar to pay it, and his interest only came into existence after the money became due.

If this were a matter to be decided without reference to legislation, I should be disposed to say that the defendant was not entitled to set these payments against the plaintiff's claim for rent, which became due subsequent to his, the defendant's, purchase of the durputni. But this is not a matter which can be decided in that way; it must be decided with reference to s. 13 of Regulation VIII of 1819 as extended by s. 62 of Bengal Act VIII of 1869 to under-tenures under this Act, and then the question arises, whether the meaning of those sections is, that the holder of a subordinate tenure of this kind, who, for the protection of the whole tenure, makes a payment to the zemindar, which the owner of the tenure above his ought to have paid, is entitled to deduct the amount so paid from the rent payable to his putnidar, in whosesoever hands the putni may be, or to treat the sum as a loan made to the person who, at the time of the payment, happens to be the owner of the putni.

This Regulation has received judicial interpretation. In the case of *Nobogopal Sircar* v. *Srinath Bandopadhya* (1) this Court held that the durputnidar is to treat the proprietor of the putni as his debtor, whether the original rent accrued in his time or not. I think that that decision, unless we are clearly of opinion that it is wrong, is binding upon us; and having regard to that fact, and also to the fact that, reading that Regulation carefully, it seems that the meaning of the Legislature was that which is put upon it by the Judges of this Court, and bearing also in mind that the tenure held by the plaintiff was primarily liable for the claim of the zemindar, I think that we must follow that case; and in that view I think that the appeal must be dismissed with costs.

J. V. W. *Appeal dismissed.*

(1) I. L. R., 8 Calc., 877.